WHERE MAY THE INJURED SUE?

IN a recent decision the Supreme Court of the United States has made a clear-cut ruling that a plaintiff injured in one State (A) may sue in another State (G) notwithstanding a statutory provision of State (A) that the suit shall be brought in State (A) "and not elsewhere." [1]

This decision involves a great principle obtaining in international and interstate law, but the particular application has occurred in comparatively few cases.

The Code of Alabama, § 6115, provided that actions brought under § 2486 (giving a right of action for death caused by a wrongful act) and § 3910 (defining liability of the employer for injuries to the employee) "shall be brought in a court of competent jurisdiction within the State of Alabama and not elsewhere."

George brought suit in Georgia, for an injury sustained in Alabama, under § 3910 of the Alabama Code. The defendant pleaded § 6115 in bar of the action. On motion, this defense was stricken. In the Georgia Court of Appeals the lower court was sustained. The court held: "Neither the Constitution of the United States nor any act of Congress passed in pursuance thereof authorizes the legislature of a State to deny to one having a transitory cause of action, originating in that State under one of its statutes, the right to appeal to the courts of another State for the enforcement of his cause of action." [2]

There being no controlling federal law, the question reverts to international law for solution.

Actions for personal torts are in their nature transitory and may be brought and maintained in the courts of any country or State which can obtain jurisdiction of the defendant.[3]

Benedict's Admiralty is quoted as follows: "Nothing within

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[1] Tenn. Coal Co. *v.* George, 34 Sup. Ct. Rep. 587.
[2] Tenn. Coal Co. *v.* George, 11 Ga. App. 221.
[3] Hanna *v.* Grand Trunk Ry., 41 Ill. App. 116.

the territory of a nation is without its jurisdiction. All persons in time of peace have the right to resort to the tribunals of the nation where they may happen to be, for the protection of their rights. The jurisdiction of the courts over them is complete, except when it is excluded by treaty."

This principle also applies in full force among the several States of the Union, and it matters not whether the right of action arises by common law or by statute of the other State.[4]

In Nelson *v.* C. & O. R. Co.,[5] after holding that a suit for personal injuries occurring in West Virginia could be maintained in Virginia, the court said: "If a different doctrine were established; that is to say, if an action could be brought only in the State in which the wrong is committed, then the wrong-doer, by removing and absenting himself from the State, could not be personally sued at all."

The courts of Georgia, in conformity to this well-established principle, take cognizance of actions for personal injuries occurring in other States, if jurisdiction of the defendant can be obtained.

In Selma, etc., R. R. *v.* Lacy,[6] Warner, C. J., said: "Where the widow brings suit in this State for damages resulting from the killing of her husband in the State of Alabama, through the negligence of a railroad company, the court will be governed by the laws of this State as to the mode of procedure in ascertaining the rights of the parties, but as to what are their rights, must be determined by the laws of Alabama, where the act complained of was done."

The same doctrine is held in later cases.[7]

While the Alabama legislature was making the effort to prevent injured persons from carrying their causes of action with them to other States, the courts of Alabama were continually entertaining suits on injuries received in other States.

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[4] Herrick *v.* M. & St. L. Ry. Co., 31 Minn. 11, 47 Am. Rep. 771; Usher *v.* W. Jersey R. Co. (Pa.), 4 L. R. A. 261; Dennick *v.* R. R. Co., 103 U. S. 11; Morgan's S. S. Co. *v.* Street, 57 Tex. Civ. App. 194, 122 S. W. Rep. 270.

[5] 88 Va. 971, 15 L. R. A. 583. [6] 49 Ga. 106.

[7] Krogg *v.* A. & W. P. R. R., 77 Ga. 203; Southern Ry. Co. *v.* Decker, 5 Ga. App. 21; Southern Ry. Co. *v.* Robertson, 7 Ga. App. 154.

In Hanrick *v.* Andrews,[8] Collier, C. J., said: "It is not the comity of courts, but the comity of nations, which authorizes the administration of foreign laws within the limits of another sovereignty; and subject to the limitations we have mentioned, the courts can exercise no discretion on the subject." In a latter decision, it is said: "Every country has jurisdiction over all persons found within its territorial limits, for the purpose of actions in their nature transitory. It is not a debatable question, that such actions may be maintained in any jurisdiction in which the defendant may be found, and is legally served with process." [9]

Again: "When a cause of action is transitory in its nature, it may be sued in any county within this State, where the defendant may be personally served with process, though he be a non-resident and only transiently here; provided his presence within the jurisdiction is not obtained by fraud or duress; and this principle is applicable in cases where the plaintiff as well as the defendant is a non-resident." [10]

In A. G. S. R. Co. *v.* Carroll,[11] which was a suit brought in Alabama for an injury occurring in Mississippi, the Alabama Supreme Court held that the right of action was determinable solely by the law of Mississippi, saying:

"Section 2590 of the Code of Alabama had no efficacy beyond the lines of Alabama. It cannot be allowed to operate upon facts occurring in another State, so as to evolve out of them rights and liabilities which do not exist under the law of that State, which is of course paramount in the premises. Where the facts occur in Alabama, and a liability becomes fixed in Alabama, it may be enforced in another State having like enactments, or whose policy is not opposed to the spirit of such enactments; but this is quite a different matter. This is but enforcing the statute upon facts to which it is applicable, all of which occurred within the territory for the government of which it was enacted.

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[8] (Ala.) 9 Porter 9.

[9] Smith *v.* Gibson, 83 Ala. 284; Helton *v.* Ala. Mid. R. Co., 97 Ala. 275.

[10] Steen *v.* Swadley, 126 Ala. 616; Lee *v.* Baird, 139 Ala. 526.

[11] 97 Ala. 126, 18 L. R. A. 433.

Section 2590 of the Code, in other words, is to be interpreted in the light of universally recognized principles of private international, or interstate law, as if its operation had been expressly limited to this State, and as if its first line read as follows: 'When a personal injury is received in Alabama by a servant or employee,' etc. The negligent infliction of an injury here, under statutory circumstances, creates a right of action here, which, being transitory, may be enforced in any other State or country the comity of which admits of it; but for an injury inflicted elsewhere than in Alabama our statute gives no right of recovery, and the aggrieved party must look to the local law to ascertain what his rights are."

By parity of reasoning, it may be said that in prescribing the court in which actions for personal injuries must be brought, the statute would have to be interpreted as if its operation was expressly limited to actions brought in the State enacting it, in the absence of a provision to the contrary.

The Supreme Court of the United States has laid down this broad principle: "Each State may, subject to the limitations of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its border." [12]

Judge Story says: "Having stated these general principles in relation to jurisdiction (the result of which is, that no nation can rightfully claim to exercise it, except as to persons and property within its own domains) we are next led to the consideration of the question, in what manner suits arising from foreign causes are to be instituted, and proceedings to be had until the final judgment. Are they to be according to the law of the place where the parties, or either of them, live? Or are they to be according to the modes of proceeding and forms of suit prescribed by the laws of the place where the suits are brought? Fortunately, here, there is scarcely any ground left open for controversy, either at the common law, or in the opinions of

[12] St. Louis R. *v.* Taylor, 210 U. S. 281, 285.

foreign jurists, or in the actual practice of nations. It is universally admitted and established, that the forms of remedies, and the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori.*" [13]

In an old English case, quoted in Story's Conflict of Laws,[14] Lord Tenterden said: "A person suing in this country must take the law as he finds it. He cannot by virtue of any regulation in his own country enjoy greater advantages than other suitors here. And he ought not, therefore, to be deprived of any superior advantage, which the law of this country may confer. He is to have the same rights which all the subjects of this kingdom are entitled to."

Mr. Minor says: "Whether a particular action is to be regarded as local or transitory, and hence whether a remedy shall be given for a foreign tort, depends upon the *lex fori,* not upon the law of the place where the cause of action arises. The question relates to the remedy, not to the substantive liability." [15] This brief statement contains the key to the solution of the question in the principal case. "The question relates to the remedy, not to the substantive liability."

The fact that the procedure or the remedy in the one State differs from that in the other State is of no consequence at all. The *lex loci* governs the right of action, and the *lex fori* governs the procedure and the remedy. A very striking illustration is found in the case of Evey *v.* Mexican Central Ry. Co., decided by the United States Circuit Court of Appeals, which holds that suit for personal injuries occurring in Mexico could be maintained in a Circuit Court of the United States in Texas, the plaintiff being a citizen of Texas and defendant a citizen of Massachusetts; that dissimilarity between the law of Mexico and the law of Texas relating chiefly to matters of procedure would not prevent the court in Texas from entertaining the suit; that the right under the law of Mexico to recover additional

[13] Story, Conflict of Laws, § 556.
[14] Section 571.
[15] Minor, Conflict of Laws, § 192.

damages in a new suit when they accrue after the first judgment is a matter of remedy only; that the requirement of the law of Mexico that the judges should try to have the amount and terms of payment fixed by agreement of the parties is a mere matter of procedure not affecting the right nor even the remedy; that the matter of damages pertains to the remedy; citing many authorities.[16]

The Evey case is overruled in Slater *v.* Mex. Nat. R. R.,[17] which holds that the peculiarities in Mexican law render it impracticable to enforce it in a Circuit Court of the United States in Texas. The Chief Justice and two other Justices dissented from this conclusion. This decision, however, does not alter the general rule, nor modify the decision in the Stewart case.[18]

The Sowers case is cited in the George case as controlling authority.[19] Sowers was injured in New Mexico, but brought suit in Texas. The New Mexico statute provided: "Hereafter there shall be no civil liability under either the common law or any statute of this territory, * * * for any personal injuries inflicted or death caused by any person or corporation in this territory, unless the person claiming damages therefor * * * shall also commence an action to recover the same within one year after the injuries occur, in the District Court of this territory * * * it being hereby expressly provided and understood that the right of action is given only on the understanding that the foregoing conditions precedent are made a part of the law under which right to recover can exist for the injuries, etc." Section 3 of this statute made it unlawful for any person to institute or carry on a suit in any other State or Territory. Section 4 provided for enjoining any suit in any other State or Territory. Section 5 provided that the Act should not apply

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[16] Evey *v.* Mex. Cen. Ry. Co., 81 Fed. 294, 38 L. R. A. 387. See also: Morgan's S. S. Co. *v.* Street, 57 Tex. Civ. App. 194, 122 S. W. 270; Wooden *v.* Western R. Co., 126 N. Y. 10, 13 L. R. A. 458; Stewart *v.* B. & O. R. R., 168 U. S. 445; Swisher *v.* A. T. & S. F. R. Co., 76 Kan. 97, 90 Pac. 812.

[17] 194 U. S. 120.

[18] 168 U. S. 445.

[19] Atchison, T. & S. F. R. Co. *v.* Sowers, 44 Tex. Civ. App. 534, 99 S. W. Rep. 190, affirmed by U. S. Supreme Court, 213 U. S. 55.

in cases in which the defendant could not be served with process in the Territory. The provisions of this statute were pleaded in defense to Sowers' suit.

The Texas Court of Appeals held as follows:[20]

"4. Const. U. S., art. 4, § 1, requiring the courts of the several States to give full faith and credit to the public acts of every other State, does not require the courts of Texas to recognize the validity in Texas of the New Mexico statute, providing that suits for personal injury occurring in the territory of New Mexico shall be maintained in the courts of that territory alone."

"5. Where a citizen of Arizona was injured in New Mexico as the result of defendant's negligence, he was not precluded from maintaining an action therefor in Texas by the New Mexico statute, requiring that all actions for injuries occurring in that territory should be maintained in the courts thereof alone."

The following extracts are taken from the opinion:

"The provisions of a law of the Territory of New Mexico were pleaded by appellant, and the court sustained exceptions to those portions that set up a requirement of that law that provided that suits of this character can be instituted and maintained in the courts of that territory alone."

"It may be that the law-making power of a state may have the power to declare that there shall be no right of action for damages arising from personal injuries inflicted through the negligence of persons or corporations within its bounds, and, however unjust and iniquitous such laws might be, they should be recognized and respected by the courts of other States. A State would have the authority to pass laws compelling its injured citizens to fully disclose their evidence and line of complaint to the negligent party, and to give notice within a certain time of claims for damages, and sister States would recognize the validity of such laws. The section of the law under consideration, however, goes farther than the extreme measures indicated, and attempts not only to prohibit its citizens, but all parties, who are so unfortunate as to be injured within its ter-

[20] Headnotes 4 and 5.

ritorial limits, from exercising the right, accorded in England, the States of the American Union, and other civilized countries, of instituting such actions wherever the guilty party may have his or its domicile."

"The State of Texas is bound, under § 1, art. 4, of the Constitution of the United States, to give full faith and credit to the public acts, records and judicial proceedings of every other State, but it is not required to recognize a statute of any State that seeks to fix the jurisdiction of its courts and prevent the citizens of other States from using its courts, if they so desire, in the enforcement of their rights. The jurisdiction of our courts must and will be prescribed by the Constitutional and legislative authority of our State, and not by that of any other State. A law attempting such interference is null and void, and as such does not come within the constitutional provision aforementioned. There is nothing in the contention that a void statute is binding on the courts of Texas until the territorial courts declare the law invalid. In the very nature of things the question will probably never be presented to the territorial courts, and, in the next place, their decision could not give vitality to a void statute respecting the jurisdiction of the courts of this State. We do not question the authority of the laws of New Mexico so far as they apply to its own affairs, but we repudiate them when they attempt to regulate the affairs of other States. The right of injured parties to recover damages from the negligent inflicter of the injuries is recognized in New Mexico, although recognition carries with it burdensome and vexatious conditions, of which, however, if its citizenship is willing to endure them, no one is in a position to complain. But the citizens of other States cannot be forced into its courts by a legislative provision that such suits can be instituted and prosecuted in the courts of no other State."

Several decisions involving practically the same principle as the Sowers and George cases, but which do not announce it so clearly or so fully, may now be noticed.

The Wisconsin statute provided for recovery for a death caused by wrongful act, etc., "provided that such action shall be brought for a death caused in this State, and in some court established by the Constitution and laws of same." It would seem

that this provision was intended to make the jurisdiction of the Wisconsin court exclusive. This statute created a right of action which did not exist at common law and in so doing, attempted to graft upon the right of action the condition that the action should be brought in a Wisconsin court. If this condition were valid, it would, of course, exclude the jurisdiction of any United States court. But the Supreme Court of the United States held unanimously that this statute could not so limit the right of action, saying: "No condition imposed upon the right granted by a State, which prevents one from availing himself of his constitutional prerogative of appeal to the courts of the United States, can be upheld. Such condition conflicts with the Federal Constitution, and is nugatory and void." [21]

And in a later case, the United States Circuit Court of Appeals made the same ruling upon the Wisconsin statute, saying: "The proviso of the act in question, if it was designed to, and in so far as it restricts the enforcement of the right to a State court is, in our judgment, inoperative and void." [22]

The Missouri (Kansas City) Court of Appeals, in Husted's case, held as follows: [23]

"4. Laws of Kansas 1903, c. 379, § 2, provides that no action shall be brought against any railroad company doing business within the State except in the county where its principal place of business is located or in the county into or through which its railroad may run and in which the plaintiff prior to and at the time of the institution of the action shall have been a bona fide resident, provided that actions for damages on account of injury to person or property may be brought in a county in which the accident occurred. Held, that such act did not destroy the transitory nature of an action for wrongful death of a railroad employee so far as other States were concerned, and did not prevent the bringing of an action in Missouri for wrongful death of such an employee in Kansas.

"5. Gen. St. Kans. 1909, § 6999, gives an action for death

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[21] Chicago R. Co. *v.* Whitton, 13 Wall. 270.

[22] Bigelow *v.* Nickerson, 70 Fed. 113, 30 L. R. A. 336.

[23] Headnotes 4 and 5.

of or injury to a railroad employee by the negligence of a fellow servant, provided notice in writing shall have been given by or on behalf of the person injured to the railroad company within eight months after the injury, and § 7000 provides that such notice may be served by a written copy thereof by the person injured or any one on his behalf, or, if he dies, by the person or persons entitled to recover for the injury, on any person designated by the railroad in the county in which the action is brought, or, if no such person has been designated or appointed, then upon any local superintendent of affairs, freight agents, agent to sell tickets, or station keeper. Held, that, while § 6999 makes the giving of notice a condition to a right of action for injuries to or death of a railroad employee occurring in Kansas, the mode of service prescribed by § 7000 is not a condition to such right, and has no extra-territorial force, so that, where an action is brought in Missouri for the wrongful death of a railroad employee in Kansas, the service of notice in any proper way, though not in compliance with § 7000, is sufficient."

In the opinion the court said:

"Actions of the nature of the present one are transitory. But defendant insists that the State of Kansas 'has the right to legislate not only as to what shall constitute a cause of action, but also to place on and about the same such limitations as to when and where the suit may be brought.' And that, as the statute above quoted provides that actions must be brought in some county in Kansas, it cannot be maintained in the courts of another State. We think that statute should not be so construed. That law was not intended to destroy the transitory nature of the action, so far as other States were concerned, but was merely intended to regulate the procedure if the action was brought in Kansas. Prescribing where the action shall be instituted has nothing to do with the creation of the right to the action, and there is no more ground for saying that, for the reason that the legislature of Kansas has prescribed where an action in that State against a railroad company for injury to persons shall be brought, it cannot be maintained in another State, than there would be in saying that, because the venue of any other personal action has

been prescribed, such actions were thereby made local to the State, and could not be maintained in any other State or country.

"Considering the creation of the right of action to be conditioned upon the giving of the required notice, it becomes necessary to plaintiff's case to inquire whether a proper notice was given. It will be seen that a notice is absolutely required by the terms of one section, and the manner of giving it is set forth in a separate section. A notice must be given, and this requirement is not made to depend upon the place where the suit is to be afterwards brought. It ought not to be said that requiring a notice was intended to deprive the right of action of its transitory character and compel a suit thereon to be instituted in Kansas. That would be giving broader significance to the terms of § 6999 than its language justifies. And yet that is the effect of sustaining defendant in its position that the notice in all instances must be served as directed in § 7000; for that section only contemplates a service in the county in Kansas in which the suit is brought. The notice must be given as a prerequisite to instituting the action, but the mode of service of such notice is not a condition to such right. The statute of Kansas prescribing the way in which a notice may be given is intended to govern the service if the action is begun in that State. It is a matter of form of procedure, and cannot have effective force and application when the action is brought in a foreign State. It is no more entitled to control outside the limits of Kansas than would be any prescribed form of pleading, or service of writs, in any transitory action.

"So, therefore, while necessarily there was no notice served in Kansas in the county in which suit was brought, as is contemplated by the statute aforesaid, yet in determining the matter of service of notice that statute need not be considered in actions brought in a foreign State, and we have only to consider whether plaintiff served defendant with notice in a manner sufficient by law of this State." [24]

In Philes' case, the same Missouri Court had occasion to pass on substantially the same question, and held: "Section 4821

[24] Husted *v.* Mo. Pac. R. Co., 143 Mo. App. 623, 128 S. W. 282.

(Kansas statutes) designates the jurisdiction in which suits shall be brought as against railroads and other common carriers. This provision is interposed to defeat plaintiff's cause of action. A sufficient answer to this objection is that the law of Kansas in that respect does not obtain in this State. The jurisdiction of the courts of this State is regulated by its own Code."[25]

The homicide statute of Maryland provided that the suit should be brought by and in the name of the State of Maryland for the use of the wife, etc. If such a provision could be effective, it would seem that this one would have the effect of making the action local to Maryland. But the Supreme Court of the United States sustained an action brought in the District of Columbia for a death occurring in Maryland, holding that the action was transitory and that the State of Maryland was only a nominal party.[26]

In a later case, the federal court in New York sustained an action there for a homicide occurring in Maryland, holding that the bringing of the suit by and in the name of the State of Maryland was a matter of procedure.[27]

In a Louisiana case, which was an action for damages caused by a steamer running into and injuring certain buildings, it was held that the action would lie in Louisiana though the tort occurred in Illinois, the court saying:

"The exception taken by the defendants that the plaintiff's action could not be maintained in this State, because under the common law which prevails in Illinois, it would be held to be local, and the plaintiff's remedy be confined to the county in which the cause of action originated, was properly overruled by the District Court. The present action is, under our laws, a personal action, and is not distinguished from any ordinary civil action as to the place or tribunal in which it may be brought." [28]

The statutes of Ohio exempted the personal earnings of a debtor from levy or attachment, and made it unlawful and a misdemeanor for anyone to assign a debt for the purpose of

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[25] Philes *v.* Mo. Pac. R. Co., 141 Mo. App. 561, 125 S. W. 553, 555.
[26] Stewart *v.* B. & O. R. R. Co., 168 U. S. 445.
[27] Hollenbach *v.* Elmore Contracting Co., 174 Fed. 845.
[28] Holmes *v.* Barclay, 4 La. Ann. 63.

having it collected by attachment and thus defeating the exemption in courts outside the State, or to send it outside the State for such purpose. An Ohio judgment creditor assigned his judgment to a third person who brought suit on it by attachment and garnishment in West Virginia, and the defendant pleaded the provisions of the Ohio law in defense of the suit. The Supreme Court of West Virginia sustained the action and subjected the wages, although it was conceded that the creditor and debtor were both citizens of Ohio, and that the judgment had been transferred and sent to West Virginia for suit for the very purpose of evading the laws of Ohio.[29] (An extreme decision, containing a fine discussion of interstate law on the point).

In Chambers v. B. & O. R. R.[30] it was held that the right to sue is one of the "privileges and immunities" guaranteed by the Constitution; but that a statute of Ohio providing that no action can be maintained in the courts of that State for wrongful death occurring in another State except where the deceased was a citizen of Ohio, the restriction operating equally upon representatives of the deceased whether they are citizens of Ohio or of other States, does not violate the privilege and immunity provision of the Federal Constitution. Justices Harlan, White and McKenna dissented, holding the act unconstitutional. The majority opinion, however, sustained the statute because it operated equally upon *all plaintiffs,* whether citizens of Ohio or not. In the principal case, there was no restriction upon the right of action when prosecuted in Alabama, but the attempt was to prevent its prosecution "elsewhere." If sustained, this statute would have forced *non-residents* of Alabama to go there to sue, in derogation of the jurisdiction of the courts of all other States of the Union.

In the controversy which has waged about the question in the principal case, two minor questions have been raised. After the Sowers case was decided, it was claimed that the decision applied only to cases in which damages would be recoverable

[29] Stevens *v.* Brown, 20 W. Va. 450.
[30] 207 U. S. 124.

by the common law; and another claim was, that the Sowers decision should be restricted to cases where the statute forbidding suit to be brought in another State was a different statute from that giving the right of action. Both these claims appear to be technical and unsound. Of the first, which seeks to restrict the Sowers decision to injuries for which the common law gave redress, it may be said that it is contrary to the principles and practice of interstate law by which the courts of any State will enforce a transitory right of action arising in another State, no matter how it arises. Furthermore, this first claim seems to be effectually silenced by the decision in the George case. The second claim, that the decision in the Sowers case applies only when the statute restricting jurisdiction to the State where the injury occurred, is an independent statute from the one giving the right of action, and that it would not apply where the restriction of jurisdiction is part and parcel of the statute creating the right of action, seems to have caused further legislation in Alabama. In April, 1911, the legislature of Alabama passed three acts amending sections of the Code 2488 (giving a right of action for death caused by a wrongful act), 3810 (defining the liability of a master for injuries to a servant) and 3912 (relating to liability of a master for death of a servant) by providing for suit in Alabama, "and not elsewhere." None of these amendments was involved in the George case. But it may be observed that, in the Sowers case, Mr. Justice Holmes (who also dissented in the George case) put his dissent upon the ground that the place of suit was made a condition precedent to the right of action, saying: "The territory could have abolished the right of action altogether if it had seen fit. It said by its statutes that it would not do that, but would adopt the common law liability on certain conditions precedent, making them, however, absolute conditions to the right to recover at all. One of those conditions was that the party should sue in the territory.[31] A condition that goes to the right conditions it everywhere.[32] I am willing to assume that the statute could

[31] Section 1.

[32] Davis *v.* Mills, 194 U. S. 451, 457.

not prohibit a suit in another State, and, indeed, it recognized that in that particular it might be disobeyed with effect.[33] But I do not see why the condition in § 1 was not valid and important."

It will be noticed that the majority opinion in the Sowers case seems to purposely avoid treating the requirement under discussion as a condition, although it is expressly so called in the statute, the court saying: "The only feature of the New Mexico statute which was disregarded was the requirement that suit should be brought only in the District Court of the Territory. It has a right, under § 906 of the Revised Statutes, to require other States when suits are therein brought to recover for an injury incurred within the Territory to observe the conditions imposed upon such causes of action, although otherwise controlled by common law principles. But when it is shown that the court in the other jurisdiction observed such conditions, and that a recovery was permitted after the conditions had been complied with, the jurisdiction thus invoked is not defeated because of the provision of the statute referred to." Thus the issue virtually was whether the so-called condition is really a condition of the right of action. With regard both to the New Mexico statute and to the Alabama statutes, it may be said that the "condition," if really such, should operate within the State creating it, as well as without. Now the requirement to bring the suit in a court of competent jurisdiction, or in a designated court, adds nothing to the general requirement of law, or is nothing more than a regulation of jurisdiction in the State passing the statute. Obviously the venue, or place of trial, is a matter of procedure or remedy. If the suit were brought in the wrong court within the State where the injury occurred, the suit would merely abate, leaving the cause of action intact. This would be true of any suit brought in the wrong court. But if the "condition" should be held valid in actions brought in other States, every such action would abate, and there would be no other court in which it could be successfully brought, which would amount to a person having a right without a remedy. As

[33] Section 3.

Mr. Justice Homles said: "A condition that goes to the right, conditions it everywhere." But as to suits brought in Alabama, to illustrate, the condition that the suit shall not be brought elsewhere, has no practical effect. Mr. Justice Holmes also said: "I am willing to assume that the statute could not prohibit a suit in another State." Then, it may be asked, how could that be done under the guise of a condition which could not be done explicitly? There is no substantial difference between a provision that no suit should be brought in any other State than Alabama and one which says that the suit shall be brought in Alabama, "and not elsewhere." The truth is, it is logically impossible to make the mere venue or the court in which suit is to be brought, a condition of the right of action. The place of enforcement of a cause of action is a part of procedure, and procedure is determined by the *lex fori*.

The conclusion of the whole matter is that a person may carry his transitory right of action with him from State to State, even as he may carry his trunk or other chattels, and the State where the cause of action arose cannot interfere with the transportation of the right with the person.

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